

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

RESOLUTION E-4720

August 27, 2015

R E S O L U T I O N

Resolution E-4720. Updates a citation program initiated by Resolution E-4257 authorizing Commission staff to penalize retail sellers for non-compliance with mandatory filing deadlines and reporting requirements of the Renewables Portfolio Standard (RPS).

PROPOSED OUTCOME:

- This resolution updates Resolution E-4257's citation rules and penalty amounts for non-compliance with mandatory filing deadlines and reporting requirements of the Renewables Portfolio Standard (RPS).

SAFETY CONSIDERATIONS:

- There are no safety considerations implicated with this resolution.

ESTIMATED COST:

- There are no costs associated with this resolution.

This Resolution is made on the Commission's own motion.

SUMMARY

This Resolution updates a citation program under the administration of Commission staff (Staff) to enforce compliance with RPS reporting requirements. Approval of this citation program will create penalties for non-compliance with the Commission's requirements for submission of RPS Compliance Reports and non-responsiveness to requests for information by Staff related to the implementation and administration of the RPS program.

The citation program applies to retail sellers subject to the Commission's RPS reporting requirements. Staff will be delegated authority to draft and issue citations for specific violations as set forth in Appendix A. Penalties may be

levied for failure to submit a compliance report at the time or in the manner required, or failure to provide information to Staff at the time or in the manner required. Nothing in this Resolution alters, or reduces the Commission's existing authority to implement and administer the RPS program.

BACKGROUND

California's Renewables Portfolio Standard (RPS) Program was established by Senate Bill (SB) 1078, and has been subsequently modified by SB 107, SB 1036,¹ and expanded in 2011 under Senate Bill 2 (1X) (Simitian).

SB 2 (1X) made numerous changes to the RPS program, most notably extending the RPS goal from 20% of retail sales of all California retail sellers² by the end of 2010, to 33% of retail sales by the end of 2020. SB 2 (1X) also modified or changed many details of the RPS program, including creating portfolio content categories for RPS procurement.

The legislation directed the Commission and the California Energy Commission (CEC) to jointly implement and administer the RPS Program. Commission implementation includes setting procurement targets and enforcing compliance with those targets. Retail sellers must periodically report progress in achieving those targets. Commission Decision (D.)11-12-052 provides guidance to retail sellers about how RPS procurement can meet the criteria for inclusion in each of the new RPS portfolio content categories that apply to RPS procurement from contracts and ownership agreements executed after June 1, 2010.³ Additionally, D.12-06-038 requires all retail sellers to submit RPS compliance reports (Annual RPS Compliance Reports) on August 1st of each year.⁴

¹ SB 1078 (Sher, Chapter 516, Statutes of 2002); SB 107 (Simitian, Chapter 464, Statutes of 2006); SB 1036 (Perata, Chapter 685, Statutes of 2007)

² California retail sellers include all investor-owned utilities (IOUs), electric service providers (ESPs), and community choice aggregators.

³ A different date applies for ESPs pursuant to CPUC implementation of Public Utilities Code Section 399.16(c)(4).

⁴ Ordering Paragraph (OP) 34

The CEC is responsible for verifying RPS procurement claims. The CEC describes its findings on those claims in an RPS procurement verification report.⁵ Pursuant to D.12-06-038, within 30 days after the CEC adopts an RPS procurement verification report, retail sellers must submit RPS compliance reports with the Commission that use the CEC verified data (Verified RPS Compliance Reports). The Commission then uses the Verified RPS Compliance Reports to make a determination of compliance with the RPS program.

Each Annual RPS Compliance Report and/or Verified RPS Compliance Report is submitted to Energy Division and served on the service list for the RPS proceeding. In the event there is no separate RPS proceeding, the retail seller must submit and serve the RPS Compliance Report and/or Verified RPS Compliance Reports in any proceeding that includes RPS compliance in its scope.

In addition to the Annual RPS Compliance Reports and Verified RPS Compliance Reports, all retail sellers are required to submit additional documentation to substantiate the portfolio content category (PCC) classification claims of RPS procurement with each Annual RPS Compliance Report.^{6 7} Finally, the large investor owned utilities (IOUs)⁸ are required to submit Project Development Status Reports on August 1st each year.^{9 10}

⁵ For example, see RENEWABLES PORTFOLIO STANDARD 2008-2010 PROCUREMENT VERIFICATION Report
www.energy.ca.gov/2013publications/CEC-300-2013-010/CEC-300-2013-010-SD.pdf

⁶ Pursuant to D.11-12-052, OPs 9, 12 and 13.

⁷ Specifics regarding what documents are required by the Director of Energy Division to substantiate PCC classification claims is posted in the "Portfolio Content Category Classification Handbook" on the RPS website: www.cpuc.ca.gov/PUC/energy/Renewables/compliance.htm

⁸ Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company.

⁹ D.12-06-038, OP 35.

¹⁰ As of August 1, 2014, the Director of Energy Division has implemented a process for each large IOU to submit its project development status report information through the Energy Division RPS contract database annually on August 1. This resolution only applies to the August 1 database submissions that are submitted pursuant to D.12-06-038, OP 35, and not any other database submissions that may be made from time to time by the large IOUs.

This resolution updates and replaces Resolution E-4257, which initiated a citation program authorizing Commission staff to fine load serving entities for non-compliance with mandatory filing deadlines and reporting requirements of the Renewables Portfolio Standard (RPS).

DISCUSSION

Pub. Util. Code Section 399.13(e) authorizes the Commission to enforce compliance with the RPS. Public utilities are subject to enforcement action and penalties pursuant to Pub. Util. Code Sections 2102-2105, 2107, 2108, and 2114. Electric service providers are subject to enforcement action pursuant to these same code sections as if they were public utilities.¹¹ Community choice aggregators are subject to enforcement action pursuant to Pub. Util. Code Section 2111.¹²

A citation program will encourage complete and timely filings of RPS compliance reports and the additional documentation necessary for Energy Division staff to substantiate retail seller portfolio content category (PCC) classification claims. It will also encourage complete and timely responses to requests for information from Commission staff that are related to the implementation and administration of the RPS.

In its administration of the RPS program, Energy Division staff has made itself available to retail sellers to ensure complete and timely RPS filings. Specifically, Energy Division staff has been available to answer questions and review reports prior to filing to aid retail sellers in filing timely and complete reports. Requests for an extension to submit have been requested and granted.

Energy Division staff have reviewed various Annual Compliance Reports, and the Director of Energy Division has sent letters to retail sellers that submitted incomplete or incorrect reports directing them to submit amended reports. Common mistakes included redacting data that should be public, submitting a

¹¹ Pub. Util. Code Section 394.25.

¹² The list in this paragraph is not meant to be exhaustive and the Commission may rely on any other applicable laws or regulations that apply.

public version of a report that is illegible, failing to fill out required information, and/or failing to submit a substantive written response to the narrative reporting requirements.

Under California law, including Pub. Util. Code Section 7, the Commission may delegate authority to its staff to perform designated functions. A citation program administered by Commission staff for specified violations will allow prompt action by Commission staff.

The issuance of a citation for a specified violation is not mandatory. In the alternative, the Commission may initiate any authorized formal proceeding or pursue any other remedy authorized by the California Constitution, the Public Utilities Code, other state or federal statutes, court decisions or decrees, or otherwise by law or in equity. Finally, the Commission's enforcement of this resolution by informal proceedings, formal proceedings, or otherwise, does not bar or affect the remedies otherwise available to other persons or government agencies. This citation program is consistent with other approved citation programs (e.g., the Resource Adequacy citation program).

COMMENTS

Pub. Util. Code Section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day comment period for the draft of this resolution was neither waived nor reduced. Accordingly, this draft resolution was mailed to parties for comments on June 17, 2015. On July 17, 2015, Energy Division received comments from the Alliance for Retail Energy Markets (AReM), Shell Energy North America L.P., and the joint comments of Bear Valley Electric Service (BVES), Liberty Utilities LLC (Liberty), and PacifiCorp. The joint comments of BVES, Liberty and PacifiCorp will be henceforth be referred as the "CASMUs." Additional joint comments were filed by Southern California Edison Company (SCE), Pacific Gas and Electric Company (PG&E), and San Diego Gas and Electric Company (SDG&E). The joint comments of SCE, PG&E and SCE will be referred to as the "Joint IOUs."

In their comments Shell, AReM, the CASMUs, and the Joint IOUs argue that the Commission should retain the 10 business day cure period for errors or omissions in RPS Compliance Reports and/or other filings and responses subject to the RPS citation program. The Commission adopts Shell, AReM, the CASMUs, and the Joint IOUs' recommendation. The Commission will allow 10 business days from the date Staff notifies a retail seller to remedy an incomplete or incorrect report. If the errors or omissions identified by Staff have not been corrected within 10 days, a fine will be available to be levied. Requests for additional time to remedy errors or omissions may be made by contacting Staff. Granting such requests are solely at Energy Divisions' discretion.

Additionally, the Joint IOUs argue that the specified violation for failure to comply with a request for information from CPUC Staff should be limited to formal requests for information related to the RPS compliance reports, instead of general information related to the implementation of the RPS. The Joint IOUs further argue that due to the number of informal and formal data requests, some without strict deadlines and some related to other proceedings, it may be difficult to determine if a retail seller has responded "in the time or manner required." The Commission agrees with the Joint IOUs and directs Commission staff to provide a header in data requests that are made directly related to RPS compliance reports. The header will read as follows: "This Data Request is directly related to Renewables Portfolio Standard compliance reports and is subject to the fine schedule outlined in Resolution E-4720."

FINDINGS

1. D.11-12-052 established the authority of the Director of Energy Division to require all retail sellers to submit additional documentation to substantiate the portfolio content category classification claims of RPS procurement with each Annual Renewables Portfolio Standard Compliance Report.
2. D.12-06-038 established a schedule for Annual Renewables Portfolio Standard Compliance Reports to be submitted on August 1st of each year.
3. D.12-06-038 established that Verified RPS Reports must be submitted using California Energy Commission (CEC) verified Renewables Portfolio Standard procurement data within 30 days after the

CEC adopts a Renewables Portfolio Standard Procurement Verification Report.

4. The Commission is authorized to enforce compliance with the Renewables Portfolio Standard.
5. The Commission has the power and duty to act as an enforcement agency and, in the exercise of that duty, to ensure that penalties are promptly prosecuted and collected pursuant to Public Utilities Code Section 2101.
6. Public utilities are subject to Commission enforcement action and penalties pursuant to Public Utilities Code Sections 2102-2105, 2107, 2108 and 2114.
7. Pursuant to Public Utilities Code Section 394.25, electric service providers are subject to Commission enforcement action pursuant to Public Utilities Code Sections 2102-2105, 2107, 2108 and 2114 as if they were public utilities.
8. Community choice aggregators are subject to enforcement action pursuant to Public Utilities Code Section 2111.
9. Under California law, including Public Utilities Code Section 7, the Commission may delegate authority to its Staff to perform certain functions.
10. Delegation of authority to Commission staff to issue citations and levy Scheduled Penalties for Specified Violations will encourage compliance with the RPS program reporting requirements.
11. The Scheduled Penalties set forth in Appendix A are reasonable, will encourage complete and timely filings of RPS compliance reports, and will encourage complete and timely responses to requests for information from Commission staff that are related to the implementation and administration of the RPS.
12. Due to the number of informal and formal data requests, some without strict deadlines and some related to other proceedings, it may be difficult to determine if a retail seller has responded to a data request related to RPS compliance reports in the time or manner required. Therefore, when making data requests directly related to RPS compliance reports, Commission staff shall include the following header: "This data request is directly

related to Renewables Portfolio Standard compliance reports and is subject to the fine schedule outlined in Resolution E-4257.”

13. The proposed procedures for the citation program ensure due process, fairness, and efficiency in the application of the citation program.

THEREFORE, IT IS ORDERED THAT:

1. The citation program and the Scheduled Penalties for the Specified Violations, as described in Appendix A, are hereby adopted.
2. Authority is delegated to Commission staff to issue citations and levy Scheduled Penalties for the Specified Violations set forth in Appendix A to enforce compliance for Load Serving Entities subject to the Commission’s Renewables Portfolio Standard reporting requirements.
3. The issuance of a citation for a Specified Violation is not mandatory, and, in the alternative, the Commission may initiate any formal proceeding authorized by the California Constitution, the Public Utilities Code, other state and federal statutes, court decisions or decrees, the Commission’s Rules of Practice and Procedure, and/or prior Commission orders, decisions, rules, directions, demands or requirements, and pursue any other remedy authorized by the California Constitution, the Public Utilities Code, other state or federal statutes, court decisions or decrees, or otherwise by law or in equity.
4. Nothing in this Resolution bars or affects the rights or remedies otherwise available to other persons or government agencies.
5. Resolution E-4720 is enacted and replaces Resolution E-4257.
6. Resolution E-4720 is effective today.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on August 27, 2015; the following Commissioners voting favorably thereon:

/s/ Timothy J. Sullivan
TIMOTHY J. SULLIVAN
Executive Director

MICHAEL PICKER
President
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
CARLA J. PETERMAN
LIANE M. RANDOLPH
Commissioners

APPENDIX A

Renewables Portfolio Standard Citation Program

1.0 Specified Violations and Scheduled Penalties

1.1 “Specified Violation” means the failure, absent an approved extension, to submit: (a) a Routine Renewables Portfolio Standard (RPS) Compliance Report at the time or in the manner required; (b) a Verified RPS Compliance Report at the time or in the manner required; and (c) other supporting data required by Staff that is related to the implementation and administration of the RPS program.

1.2 “Scheduled Penalties” for Specified Violations are set forth in Appendix A.

1.3 Modification of Scheduled Penalties. Scheduled Penalties may be modified by Resolution.

2.0 Procedures for Citation Program

2.1 Citations for Specified Violations. After appropriate informal investigation and verification that a Specified Violation defined in this Resolution has occurred, Commission staff is authorized to issue a citation. The Specified Violations and the corresponding Scheduled Penalty that may be levied are described in this Appendix.

2.2 Service of Citations. Citations shall be sent by Commission staff by first class mail to the Respondent at the address of the agent for service of process.

2.3 Content of Citations. Citations shall state the alleged violation, the evidence supporting the alleged violation, and the proposed Scheduled Penalty. The citation may summarize the evidence and Commission staff shall make the evidence available for timely inspection upon request by the Respondent. Citations also shall include an explanation of how to file an appeal of the citation, including the explanation of a right to have a hearing, to have a representative present at the hearing, and to request a transcript. With each issued citation, Staff must serve a copy of Resolution ALJ-299 and the Rules adopted pursuant to that Resolution’s Appendix A.

2.4 Response to Citation. A Respondent may either: (1) accept the citation and the Scheduled Penalty; or (2) appeal the citation.

2.5 Submitted to Commission staff. Unless otherwise specified, “notify Commission staff,” “submitted,” or “submit” means to send a written communication by the U.S. Mail or an express mail service to the address specified in the order or citation that requires the filing or notification. These written communications are not filed with the Commission’s Docket Office. In addition to or instead of communications by mail service, Commission staff may allow electronic submissions.

2.6 Acceptance of Scheduled Penalty. In the event the proposed Scheduled Penalty is accepted, the Respondent shall notify Commission staff in writing and shall pay the penalty in full as set forth in subsection 2.8, below within thirty (30) days of the date of the citation.

2.7 Appeal of Citation. In lieu of accepting the Scheduled Penalty, a Respondent may appeal the citation and request a hearing. In the event of an appeal, any remedy available may be imposed, and the remedy shall not be mandated by or limited to the Scheduled Penalty.

2.7.1. Notice of Appeal. To appeal a citation, the Respondent must file a written Notice of Appeal with the Commission’s Docket Office. The Notice of Appeal must state the date of citation, attach a copy of the citation, indicate the rationale for appeal, and be filed with Commission staff within thirty (30) days of the date of the citation.^{13 14}

2.7.2. Commission Staff’s Response to Notice of Appeal. In response to a Citation Appeal, Staff will file a copy of the document that gave rise to the citation and a complete copy of the citation, including all attachments,

¹³ The Notice of Appeal for a Citation Appeal must be served, at a minimum, on the Chief Administrative Law Judge (with an electronic copy to: ALJ_Div_Appeals_Coordinator@cpuc.ca.gov), on the Director of the Safety and Enforcement Division, and on the Director of Energy Division.

¹⁴ For a Citation Appeal, the parties to the appeal will be respondent and Staff which issued the citation which is appealed. Other interested persons may be placed on the information only section of the service list.

that is being appealed with the Commission's Docket Office no later than seven business days after the Notice of Appeal is filed. The Response to Notice of Appeal must be served on the Chief Administrative Law Judge (with an electronic copy to: ALJ_Div_Appeals_Coordinator@cpuc.ca.gov) and appellant on the same day the Compliance Filing is filed. Staff must serve Respondent with the Response to Notice of Appeal and file a proof of service to this effect at the same time it files the Response to Notice of Appeal.

2.7.3. Extension of Time to File the Notice of Appeal. There shall be no extension of time to file a Notice of Appeal for citations issued pursuant to the RPS Citation Program.

2.7.4. Referral to Administrative Law Judge. The Chief Administrative Law Judge shall designate an Administrative Law Judge to hear the appeal within a reasonable time of receipt of the Response to Notice of Appeal.

2.7.5. Time of Hearing. No less than ten (10) days after the assignment of an Administrative Law Judge, that Administrative Law Judge shall set the matter for hearing. The Administrative Law Judge may, for good cause shown or upon agreement of the parties, grant a reasonable continuance of the hearing.

2.7.6. Exchange of Information. No later than three business days prior to the scheduled hearing on a Citation Appeal, the parties must exchange all information they intend to introduce into the record at the hearing which is not included in the citation or the Compliance Filing already filed with the Commission. The information exchange is not to be filed with the Commission or served upon the Administrative Law Judge or other decision makers. The Administrative Law Judge may request a copy of that exchange of information.

2.7.7. Location of Hearing. Appeals of citations shall be heard in the Commission's San Francisco courtroom on regularly scheduled days. The Administrative Law Judge may change the location of the hearing.

2.7.8. Transcripts. The Respondent may order a transcript of the hearing, and shall pay the cost of the transcript in accordance with the Commission's specified procedures.

2.7.9. Obtaining an Interpreter. Upon a good faith showing of language difficulty and written request to the assigned Administrative Law Judge and the Commission's Public Advisor's Office not less than five business days prior to the date of the hearing, the respondent will be entitled to the services of an interpreter at the Commission's expense.

2.7.10. Representation at Hearing. The Respondent may be represented at the hearing by an attorney or other representative, but any such representation shall be at the Respondent's sole expense.

2.7.11. Evidentiary Hearing. At an evidentiary hearing, Commission staff bears the burden of proof and, accordingly, shall open and close. The Administrative Law Judge may, in his or her discretion to better ascertain the truth, alter the order of presentation. Formal rules of evidence do not necessarily apply, and all relevant and reliable evidence may be received at the discretion of the Administrative Law Judge.

2.7.12. Submission. Ordinarily, the matter shall be submitted at the close of the hearing. The Administrative Law Judge, upon a showing of good cause, may keep the record open for a reasonable period to permit a party to submit additional evidence or argument.

2.7.13. Decision. The Administrative Law Judge shall issue a draft Resolution resolving the appeal not later than sixty (60) days after the appeal is submitted in accordance with subsection 2.7.12, and the draft Resolution shall be issued for public comment and placed on the first available agenda, consistent with the Commission's applicable rules.

2.7.14. Rehearing. A Resolution resolving an appeal is subject to rehearing and judicial review.

2.7.15. Communications. From the date that a citation is issued to and including the date when the final order is issued, neither the Respondent nor Commission staff, or any agent or other person on behalf of the Respondent or Commission staff, may communicate regarding the appeal, orally or in writing, with a Commissioner, a Commissioner's advisor, or an Administrative Law Judge.

2.8 Payment of Scheduled Penalties. Payment of Scheduled Penalties shall be submitted to the Commission's Fiscal Office, 505 Van Ness Avenue,

San Francisco, CA 94102, in the form of certified check, payable to the 'California Public Utilities Commission for credit to the State General Fund.'

2.9 Default. If the Respondent: (a) notifies Commission staff of acceptance of a Scheduled Penalty and fails to pay the full amount of the Scheduled Penalty within thirty (30) days of the date of the written acceptance of the Scheduled Penalty; or (b) fails to notify Commission staff of acceptance of a Scheduled Penalty or fails to file a written Notice of Appeal in the manner and time required, the citation and penalty shall become final and the Respondent be considered in default. Upon default, any unpaid balance of a Scheduled Penalty shall accrue interest at the legal rate of interest for judgments [Code of Civil Procedure Section 685.010], and Commission staff and the Commission may take any action provided by law to recover unpaid penalties and ensure compliance with applicable statutes and Commission orders, decisions, rules, directions, demands or requirements.

2.10 Reporting. Commission staff shall regularly report to the Commission on actions taken pursuant to this Resolution. The report shall include a summary of the citations and penalties imposed, penalties paid, and the disposition of any appeals.

SPECIFIED VIOLATIONS AND SCHEDULED PENALTIES

SPECIFIED VIOLATION	SCHEDULED PENALTY
Failure to submit an Annual RPS Compliance Report, the Project Development Status Report (where applicable) ¹⁵ and the Verified RPS Compliance Report at the time required. ¹⁶	\$500 per incident plus \$500 per day for the first ten days the submission is late and \$1,000 for each day thereafter. ¹⁷

¹⁵ As of August 1, 2014, the Director of Energy Division has implemented a process for each large IOU to submit its project development status report information through the Energy Division RPS contract database annually on August 1. This resolution only applies to the August 1 database submissions that are submitted pursuant to D.12-06-038, OP 35, and not any other database submissions that may be made from time to time by the large IOUs.

¹⁶ The Commission acknowledges that a Compliance Report may be missing so much of the required information that it crosses into being considered a late filing, but refrains from opining as to the standard to judge that at this time.

¹⁷ The ten (10) day periods throughout this Resolution are counted from the first business day after the filing is due and every business day thereafter. Requests for additional time to remedy errors or omissions may be made by contacting Energy Division staff. Granting such requests are solely at Energy Divisions' discretion.

SPECIFIED VIOLATION	SCHEDULED PENALTY
Failure to comply with a request for information or documentation from Commission staff that is related to implementation of the RPS in the time or in the format required within 10 business days of Commission staff's request. ^{18 19 20} Requests can include, but is not limited to information or documentation to substantiate the portfolio content category (PCC) classification claims of RPS procurement with each Annual RPS Compliance Report. ²¹	\$500 per incident plus \$500 per day for the first ten days the submission is late and \$1,000 for each day thereafter. ²²

¹⁸ See footnote 15.

¹⁹ If, after the 10-day cure period, a deficiency identified by Staff has not been cured, the daily penalty, if any, will be calculated from the date the RPS compliance filing was due (if the compliance report was filed late), or from the date on which the Staff notified the retail seller of the deficiency (if the compliance report was incomplete or incorrect).

²⁰ A request by staff for additional documentation and/or information also does not preclude requests for other documentation and/or information or a finding that the Report is late.

²¹ See footnote 15.

²² See footnote 17.